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International Cooperation in Combating Transnational Crime: New Challenges in the Twenty-first Century

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I. Introduction

1. The present document examines some of the realistic and imaginary fears related to transnational organized crime today. It is a discussion paper, in the sense that some issues are identified, questions are posed and controversies are highlighted, but no final solutions are provided.

2. Some definitions of transnational organized crime are presented in chapter II, and the concerns surrounding the growth of this type of crime are described and critiqued in chapter III. Some controversial issues arising from research follow in chapter IV, and the points for discussion in chapter V provide food for thought.

3. In its resolution 53/111 of 9 December 1998, the General Assembly decided to establish an ad hoc committee to elaborate an international convention against transnational organized crime and to discuss international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, and illegal trafficking in and transporting of migrants. The Ad Hoc Committee began its work in 1999 and is expected to complete it by the end of 2000. Because the Convention is an instrument to promote international cooperation in dealing with one aspect of transnational crime, namely transnational organized crime, a section on the implementation of the Convention and its protocols has also been included in the present document (chapter VI).

II. Concepts and definitions

4. A number of crucial elements need to be carefully examined if a definition of transnational organized crime is to be attempted. The following standard definition, which was used in the report on the results of the Fourth United Nations Survey of Crime Trends and Operations of Criminal Justice Systems, could apply to a variety of cases: "offences, whose inception, perpetration and/or direct effect or indirect effects involved more than one country" (A/CONF.169/15/Add.1, para. 9).

5. Transnational crime, however, is a broad concept covering different offences that mainly fall, at times simultaneously, in the domain of organized crime, corporate crime, professional crime and political crime. In analytical terms, distinctions between these types of crimes appear to be easy to draw. For example, it can be suggested that organized crime is normally carried out by illegal enterprises, whereas corporate crime can be identified with illegal behaviour adopted by legitimate companies to reduce cost and maximize profits.[1] It could also be argued that, while professional criminals generally refrain from intimidation and violence against official authorities, members of organized crime are both inclined and able to use intimidation and violence.[2] It is also true that terrorist groups engaged in racketeering have different features than those of more conventional criminal organizations, a major feature being the different goals they pursue. However, these distinctions do not alter the fact that it is extremely difficult to draw precise definitional boundaries between organized and corporate crime.[3]

6. Controversies may arise when attention focuses on the adjective "transnational", which implies that the types of crime under discussion always and solely take place across borders. This is not always the case. Most illegal markets are an example. Illicit goods are produced locally, and only their distribution takes place internationally. Another example is trafficking in human beings, where illegal migrants are recruited at specific locations and only the trafficking operations take on an international character. Moreover, many conventional organized groups owe their international power to the resources they accumulate in their specific local context.

III. Concerns

7. Official concerns about transnational crime appear to be centred on the feeling of vulnerability that developed countries harbour towards criminal activity originating in other countries. This manifests itself through fears that illicit goods, more dangerous than any of those produced by developed countries, may destroy the citizens and institutions of the civilized world.

8. It is difficult to provide a comprehensive overview of the main contemporary manifestations of transnational crime. Little empirical research is available, and existing studies focus mainly on the national and local impact of transnational crime. The United Nations through its global studies on transnational organized crime, is trying to fill this gap.

9. Transnational organized crime should not be exclusively identified with the illegal activities of organizations such as the Italian Mafia, Russian organized crime syndicates, the Chinese triads, the Japanese yakuza, the Colombian cartels or the Nigerian networks.[4] These criminal organizations may perhaps constitute the most

powerful groups engaged in transnational criminal activities, but they are far from monopolizing such activities. Similarly, attention should not be focused solely on conventional activities such as the drug trade, trafficking in human beings or stolen goods and the laundering of illegal proceeds. Transnational crime may well transcend such conventional activities and take on more complex features. It may, for example, mingle with entrepreneurial and, at times, governmental deviance. This occurs when legally produced goods are illegally marketed, as in the case of smuggling nuclear material, armaments, pharmaceutical products, tobacco, alcohol, food and so on. This also occurs when the illegal marketing of goods produced in one country is supported by the complicity of corrupt politicians in a country in which those goods are officially banned.

10. Transnational organized crime includes tax evasion, the forgery of clothes and electronic equipment, fraud against international financial institutions, unfair competition on international markets, industrial espionage, the import and export of protected plants and animals, trafficking in works of art and the illegal dumping of toxic industrial waste. It also involves not only illegal activities by terrorist groups or organizations but also the violation of sanctions and embargoes imposed on countries by the international community and includes aggression against countries in the form of war and genocide.

11. Most transnational criminal activity is accompanied by such illegal acts as the corruption of officials, which facilitates both the commission of an offence and its concealment, and money-laundering, through banking institutions or off-shore agencies. A final concern is that perpetrators of transnational organized crime are willing and able, as necessary, to use violence for the pursuit of their interests.

IV. Controversial issues

12. In the past few decades, the transnationalization of criminal activity has increased substantially. The increase is due not only to the geographical distance over which crimes are committed but also to the frequency with which criminals operate across regional and national borders. This development is not taking place in isolation but is part of the general process of globalization.

13. Economic interdependence and the increase in international economic exchange make the transfer of goods and the movement of people across borders easier. Illegal traffickers take advantage of these developments using parallel or overlapping commercial routes. This may explain why so many groups that are involved in transnational criminal activity own transport firms and/or import-export businesses.

14. Causes of crime are always hard to establish, although some remarks on transnational organized crime can be attempted. It could be tentatively suggested that many types of transnational crime are caused by:

(a) The great economic disparity existing in the world. One consequence of that disparity is that, in many countries, large sections of the population are lured into producing illegal goods. Many people are also vulnerable to physical exploitation, for example in the form of prostitution, by criminal organizations. Moreover, poor countries offer attractive markets for goods that are stolen in more affluent ones. Simultaneously, advanced countries, owing to high production costs and/or high taxes, often expand the hidden sectors of their economy and employ cheap unregistered workers;

(b) Political conflicts erupting in many countries and regions, which generate widespread violence and encourage trafficking in human beings and illegal arms. Countries at war may have a financial interest in other forms of crime, such as the illegal import of arms. In doing so, they establish illicit partnerships with other countries.

15. Hence, one controversial issue is the extent to which more economically advanced countries foster transnational crime. For example, in respect of illicit drugs, many officials in developed consuming countries are prone to attribute responsibilities to producing countries and fail to consider how a pre-existing pharmacological culture allowed illicit drug use to develop. They also overlook the demand side of the equation, focused as they are and on the assumption that proceeds generated by illicit drugs are only appropriated by foreign producers and large distributors. They thus consider the considerable revenues generated by illicit drugs within the consuming countries themselves.

16. A second controversial issue is that transnational organized crime is seen by many officials to be the result of the growing numbers and variety of individuals and groups reaching more economically advanced countries. Since such individuals and groups arrive from places scattered around the world, and often from countries in transition or in turmoil, they are perceived as being difficult to control and impervious to integration. The

newcomers are said to bring with them their social and commercial networks, which make law enforcement difficult and, at the same time, facilitate "conspiracy".[5] No attention is given to similar difficulties encountered by law enforcers prior to the arrival of migrants and to the commercial "conspiracy" that already features in host countries long before they are "invaded" by aliens. In other words, the fact that migrants find in the host countries the social and institutional environment that makes their illicit enterprises possible is normally deemed unworthy of any analytical effort.

17. Some definitions of transnational crime imply a notion of ethnic succession. According to this notion, certain national cultures and groups are expected to climb the crime ladder and eventually occupy a prominent position in illegal markets. Official classifications of organized crime, for example, have often been inspired by ethnic qualifications and categories.

18. Criminological analysis has long disputed the "ethnicity trap",[6] both because of the large number of ethnic groups involved in transnational organized crime and because of the interaction in which they engage in criminal business. Given the increasing social, geographical and inter-cultural mobility, ethnicity may be seen less as a causal or facilitating factor than mobility itself.

19. More attention should be given to analysing how geographical, social and cultural mobility may facilitate criminal undertakings. More specifically, analysis should focus on how criminal activity conducted by aliens needs a receptive environment, along with a range of indigenous partners and agents, in the countries in which criminal activities are carried out. Many officials are concerned that, because migrant communities or groups of ethnic settlers are marginalized, they are believed to support the criminal enterprises run by their compatriots. This belief should be challenged, and the facile equation migrants plus marginalization equal crime should be severely criticized. In this respect, a different issue could be explored, namely that ethnic minority groups, in order to develop criminal entrepreneurship, need partners among the indigenous groups of the very host society marginalizing them. Partnerships with legitimate entrepreneurs of the host country, moreover, may offer larger guarantees that, along with official commercial consortia, effective smuggling lines are also set up.

20. The investment of illegitimate proceeds in economically advanced countries raises other controversial issues. Some studies indicate that criminal groups are slowly abandoning their involvement in visible economic activities and are diverting criminal profits towards the more secretive financial sector.[7] This diversion is said to make detection more difficult and the confiscation of assets problematic. The entry of transnational criminal operators in the financial world is believed to herald potential disruption, distortion of rules, erosion of ethics and suppression of competition; ultimately, it is assumed to foster a "purge" among entrepreneurs, leading to the survival of those more criminally fit. Some arguments behind this belief are given below.

21. Organized criminal groups have been charged with upsetting the harmonious relationship between demand and supply. By making illicit goods available, for example, they are said to reduce the aggregate demand for licit goods in the market and consequently to limit the revenues of the legitimate companies producing and distributing them. This argument implicitly rules out the possibility that criminal proceeds may be used to acquire licit goods, although there is no evidence that members of organized crime groups are more restrained spenders than ordinary consumers. It has also been argued, however, that organized criminal groups have a low propensity for consumption because their illicit income continues to circulate within criminal markets to finance subsequent illicit initiatives. It has also been claimed that criminals tend to transfer abroad parts of their earnings, thus depriving the country in which they operate of substantial funds.

22. Yet another controversial issue emerges here, because these are hardly specific characteristics of organized crime. Legitimate entrepreneurs also accumulate inert wealth and may fail to translate all their earnings into dynamic investment or consumption. Some legitimate entrepreneurs and politicians may also transfer money abroad, and, despite the existence of permissive rules legally allowing them to move their capital across borders, they find ways of increasing the sums moved by resorting to illegal practices. It is worth pointing out, in this respect, that so-called "hot money", which is commonly and almost automatically associated with criminal proceeds being laundered, in fact includes money earned, legitimately or otherwise, by official actors.[8] Monies that are used for or accumulated through tax evasion, bribes, flight capital, illicit transactions in licit goods (such as arms transfers) and the illegal funding of political parties are examples of "hot money", as is money loaned to developing countries that is furtively invested in the developed world that gave

the loan. Credible estimates suggest that the proportion of money laundered by organized crime only constitutes around 10 per cent of the overall amount of "hot money".[7, 9, 10]

23. It is controversial whether organized criminal groups teach or learn from deviant entrepreneurs and politicians. It could be argued, for example, that transnational criminal groups that invest illicit proceeds in the official economy have learned from the techniques and the rationalizations of white-collar and corporate offenders, thus being, in a sense, corrupted by the economy rather than corrupting it.

24. Descriptions that characterize members of organized criminal groups as being too visibly different or perhaps too culturally and linguistically different, to become accepted in the business world do not consider how acceptance in that world is mediated by individuals and groups who act as go-betweens. The investment of criminal proceeds in the financial market, for example, forces organized crime to open up to, and establish connections with, mediators and agents who make *pecunia non olet* (money does not smell) their favourite motto.

25. In brief, the encounter between transnational organized crime and the official economy is not the result of an unnatural relationship between a harmonious entity and a dysfunctional one. Rather, it amounts to a joint undertaking of two loosely regulated worlds, both deviating from the rules they officially establish for themselves. For example, the rules of fair competition are often disregarded by those very legitimate entrepreneurs who claim their universal validity and, similarly, the "rules of honour" are ignored by criminal entrepreneurs who claim their unconditional faith in them.[11]

V. Points for discussion

26. In this chapter, a number of examples are given in an attempt to prove that the intermingling of organized, corporate and white-collar crime constitutes a specific feature of transnational illegal organizations. Some remarks accompanying the examples given are intended to provide points of discussion and some food for thought.

27. Among the illegal activities conducted by transnational organized crime, as already mentioned, those associated with the trafficking in human beings are paramount. In this respect, some authors appear to assume that this activity is carried out by structured enterprises engaged in specialistic, long-term undertakings. Related to this assumption is the implicit association of this type of activity with organized crime, therefore conveying the notion that those engaged are full-time criminal entrepreneurs who have developed expertise and accumulated resources in previous illegal activities. Other authors, instead, suggest that many of those involved in trafficking in human beings have no previous criminal record. Cases that have come to public attention suggest that the second proposition is as close to reality as the first. Enterprises involved in trafficking often derive their skills and expertise from the licit arena of business in which they operate. Travel agencies are involved, along with transport companies, at times in connection with informal employment agencies. Usually, none of the staff of such agencies and companies has a criminal record much less a link to organized crime. While committing offences that organized criminal groups also commit, companies may become partners of the latter, without sharing their overall culture and strategies. To define such companies as transnational organized crime adds to the definitional chaos that already characterizes this type of crime. Thought should, therefore, be given to the identification of more nuanced definitions.

28. Transnational organized crime should not be mistaken for activity conducted by centralized, highly structured organizations and ruthless market operators. Dispersed participants and diverse social actors are involved in networks in which opportunistic chances are taken and short-term alliances are set up.[12]

29. According to some studies, traffickers frequently maintain control of illegal migrants once they reach the country of destination and force those trafficked to commit crime, engage in prostitution or work for low wages,[13] although it has also been argued that girls and women are recruited in their home country and are promised jobs abroad but are later forced into prostitution. Studies have also shown that illegal migrants who use the services of traffickers experience debt bondage and that, in addition to transportation, smugglers charge exorbitant rents for substandard, abandoned or even condemned housing, and that debts force immigrants to work in sweatshops.[5]

30. It is inappropriate to portray such illicit business as one exclusively characterized by a victimizer-victimized relationship. Thought should be given to the fact that there are both willing and unwilling victims, and that the very concept of trafficking should be properly unravelled if other dynamics are to be brought to light. According to the International Organization for Migration, for example,

many women illegally entering developed countries are fully aware of the type of job for which they are destined. They often know, for example, that their work in the host country will be in the sex industry. Some choose to pay a fee to traffickers who, in this context, could be more appropriately described as "illegal migration operators". Some of the women plan to stay in the host country for a number of years and return home with sufficient money to start a business. Upon returning, these women may display their newly acquired economic status, describe the easy ways in which money can be earned and talk about the tolerance of the police and the enthusiasm of customers. Sometimes, they may end up encouraging other women to follow their example, therefore acting as facilitators or, indeed, as "migration operators" themselves.[14]

31. The conditions under which illegal migrants are forced to work would not seem to be attributable to traffickers, as responsibility for such conditions lies with the labour market in which migrants are employed. Some thought should be given to the increase in flexible and casual work that is observed in most developed countries. This increase has created a situation where workers with low social and economic expectations are highly desirable. Among these workers, illegal migrants seem to have a formidable advantage because, as soon as their expectations become higher, employers can report them to the police as illegal. Paying a fee to traffickers is part and parcel of this phenomenon, as migrants are taught that it is a privilege to enter an economically advanced country and, once there, they had better not ruin such a unique opportunity by demanding too much. In sum, trafficking in human beings could also be analysed within a demand-supply framework, as illegal migrants employed in the hidden economy, including the sex industry, meet a specific demand in economically advanced countries. More thought, therefore, should be given to the effects of a strict immigration policy, which may lower the expectations of migrants more than it limits their numbers.

32. Among the circumstances that generate official anxiety is the fact that members of transnational criminal groups take advantage of differences in legislation within a country, moving across countries with a view to exploiting normative loopholes and inconsistencies. Therefore "criminal groups spread into sectors where the risk of being arrested and heavily sentenced is relatively low, especially compared to the attractive economic return".[15] Responses are advocated that may reduce such normative inconsistencies while reducing the mobility of transnational organized groups. The creation of agreements between countries is among the most popular responses, accompanied by the establishment of joint working groups and cooperation between law enforcement agencies.

33. Thought should be given to the possibility that this type of response, which entails that police forces around the world coordinate their efforts, may contribute to the establishment of networks and practices and of technical and political alliances that escape democratic control of both States and the international community. Fear of the powerful threat posed by transnational organized crime, in sum, may be exploited with a view to cutting normative corners and eroding civil rights.[16]

34. Consideration should also be given to the fact that transnational organized crime traditionally creates demand for the smuggled goods it brings into markets. As an example, cigarette smuggling started in Mediterranean countries as early as the 1950s and contributed to the unpredicted success of certain cigarette brands and the decline of local tobacco products. The current smuggling of goods such as cars, clothes, computers and mobile phones in developing countries and countries with economies in transition may have the same effect, making those countries totally dependent upon products from and keen to adopt the lifestyles of developed countries.

35. There is widespread agreement that transnational organized crime is the result of new criminal opportunities. The nature and features of these opportunities deserve brief examination. According to a distinction suggested by Albanese,[17] there are opportunities that provide easy access to illicit earnings with relatively low risk, and there are opportunities created by offenders. The former include not only the provision of illicit goods and services that are in high demand but also opportunities that are the result of social and technological change. Opportunities created by offenders often involve bribery or extortion. Examples, in this case, include protection rackets and frauds involving otherwise legitimate business enterprises. However, some forms of transnational organized crime make this distinction extremely blurred, if not redundant. Transnational organizations seize easy opportunities and create new ones at the same time. Their modus operandi is such that criminal acts become increasingly interdependent and multifaceted.[15] Skills acquired in one field are utilized in new markets, while partnerships are established with a variety of actors, be they legitimate or otherwise. The movement from one activity to the other, crucially, entails an intermittent shift from areas that traditionally pertain to organized crime to areas that are the traditional preserve of

white-collar or corporate crime. In brief, transnational organized crime has some of the features of transnational white- collar crime, as in the case of legitimate corporations making bribery payments to foreign officials to facilitate the marketing of their goods in countries where those goods are banned.[18] More emphasis should be placed on the notion that transnational crime encapsulates this mixture of criminal conduct, which may be a reason for serious concern.

36. This leads to a final consideration. There is a widespread feeling that white-collar and corporate crime are less stigmatized and penalized than conventional organized crime. With the interconnection of these types of criminal behaviour, the relative tolerance normally accorded to white-collar criminals may be extended to members of conventional organized criminal groups.

37. Further research into the causes of the various types of transnational crime is vital. The effects of deterrence and penalization and the role of law enforcement should also be studied.

VI. Implementation of the United Nations Convention against Transnational Organized Crime and the protocols thereto

38. In its resolution 54/125 of 17 December 1999, the General Assembly decided that the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders should devote particular attention to ways and means of making operational the provisions of the United Nations Convention against Transnational Organized Crime, especially taking into account the needs of developing countries in the area of capacity-building. In its resolution 54/126 of 17 December 1999, the Assembly requested the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime to intensify its work in order to complete it in the year 2000. As a result of the satisfactory progress in the negotiations on the draft Convention and its draft Protocols, it is expected that the instruments will be adopted by the Millennium Assembly.

39. The draft Convention in its present form contains four articles related to its implementation. According to one of those articles, a Conference of the Parties to the Convention would be established to improve the capacity of States parties to implement the Convention. The Conference of the Parties would be charged with agreeing upon mechanisms to, *inter alia*, facilitate activities by States parties under the articles of the Convention dealing with technical cooperation, including by mobilizing voluntary contributions, and to review periodically the status of implementation of the Convention. The Conference of the Parties would be informed of the measures taken by States parties in implementing the Convention and of the difficulties encountered. Articles related to implementation also deal with the secretariat of the Conference of the Parties, training and technical assistance, and measures for the implementation of the Convention through economic development and technical assistance.

40. In view of the ground-breaking nature of the Convention and its three protocols, their implementation will pose significant challenges to States and the United Nations. Many States will need to put in place new or amend existing legislation, as well as to strengthen their law enforcement structures and criminal justice systems, in order to be able to comply with their obligations under the Convention and its protocols. On many occasions, such action will be required in order for the States to ratify or accede to the Convention and its protocols. For many States, legislating in accordance with the provisions of the Convention and its protocols will require expertise and know-how that may not be available domestically. Putting in place new or amending existing legislation may also require knowledge of the choices made by other States, as well as the experience gained by them, in drafting and implementing such legislation. Strengthening law enforcement structures and bringing about the necessary improvements on criminal justice systems will require the development of human resources, through training and the upgrading of skills, as well as the acquisition or modernization of equipment and the development or upgrading of facilities. Consequently, there will be a need to make available technical assistance at the earliest possible stage of the implementation process.

41. While some of this assistance might be provided at the bilateral or regional level, the United Nations will have a central role to play in fostering and sustaining implementation of the Convention and its protocols. Following the adoption of the Convention and its protocols, the Centre for International Crime Prevention will promote their signature and ratification, thereby ensuring the expeditious entry into force of the instruments. The Centre will need to provide advisory

services to assist States in preparing legislation required under the Convention. The Centre will also need to organize training courses and provide other forms of assistance to requesting States to support national efforts aimed at strengthening the capacity of their law enforcement and criminal justice systems to comply with their treaty obligations. Following the entry into force of the Convention and its protocols, the Centre will need to develop a comprehensive technical cooperation programme to assist interested States in complying with the provisions of the new instruments and in putting those provisions into effect.

42. The Conference of the Parties is to be convened no later than one year after the entry into force of the Convention. The Centre for International Crime Prevention, as the secretariat of the Conference of the Parties, is to assist the Conference in fulfilling its functions.

43. To carry out the above-mentioned tasks, the Centre for International Crime Prevention will need to be strengthened. Additional resources should be allocated to the Centre to enable it to support States in their efforts to ratify the Convention and its protocols and implement the provisions of those instruments. In addition, the Centre will need to be provided with adequate resources to assist the Conference of the Parties in carrying out its work.

Notes

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